

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

ELAINE PURCELL)	
Claimant)	
VS.)	
)	Docket No. 1,007,286
MIDWEST STAFF SOLUTIONS, INC.)	
Respondent)	
AND)	
)	
LUMBERMAN'S UNDERWRITING ALLIANCE)	
Insurance Carrier)	

ORDER

Respondent and its insurance carrier appealed the July 31, 2003 preliminary hearing Order entered by Administrative Law Judge Julie A. N. Sample.

ISSUES

In the July 31, 2003 preliminary hearing Order, Judge Sample determined claimant's present need for medical treatment to the right shoulder, including rotator cuff surgery, was directly related to the accidental injury claimant had sustained performing her work activities for respondent. Accordingly, the Judge granted claimant's request for medical treatment.

Respondent and its insurance carrier contend Judge Sample erred. They argue that claimant sustained nothing more than a temporary aggravation of a preexisting shoulder injury while working for respondent. They argue that claimant's request for medical treatment is neither supported by claimant's testimony nor the medical evidence. Consequently, respondent and its insurance carrier request the Board to deny claimant's request for medical treatment.

Conversely, claimant argues both claimant's uncontradicted testimony and the medical evidence established that claimant sustained a repetitive trauma injury to the right shoulder as a result of the work that she performed for respondent. And that the office work that claimant performed after leaving respondent's employment was not sufficiently demanding to have produced a new injury. Accordingly, claimant requests the Board to affirm the July 31, 2003 Order.

The only issue before the Board on this appeal is whether claimant's present need for medical treatment of the right shoulder is directly related to the work that she performed for respondent through her last day of work in November or December 2001.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record compiled to date, the Board finds and concludes:

The Board affirms the Judge's finding that claimant sustained a repetitive trauma injury to her right shoulder while working for respondent through November or December 2001. In the spring or summer of 2001, claimant began experiencing symptoms in her right shoulder. At that time, claimant was employed by respondent and working as a saw operator cutting rough lumber. The job required claimant to physically push and pull four-foot to 20-foot-long pieces of rough lumber onto a feeding chain and then pull the cut lumber onto a cart. The job was repetitive, physically strenuous and required claimant to perform some lifting over shoulder level.

When claimant's right shoulder symptoms began, she began taking ibuprofen and began applying ice and heat. But claimant's symptoms worsened and sometime during the summer of 2001 she reported them to her supervisor. But claimant did not request medical treatment at that time as she desired to continue to treat herself.

In September 2001, however, claimant requested medical treatment and was referred to Dr. Reuben J. Burkman, who diagnosed right shoulder capsulitis secondary to repetitive trauma. Dr. Burkman's notes from September 11, 2001, read, in part:

. . . She [claimant] states that she is in a job that requires repetitive pulling of a board. She works in the wood part and reports that, since June, she has had trouble with the right shoulder. She states that her position is supposed to require four people for proper ergonomics and that she holds a pin *[sic]* in the left hand, pulls boards forward with her right hand. She complains of pain in the right shoulder not precipitated by any sudden onset or injury. She complains of pain in the shoulder, states that it is hard to pivot and swing her arm and decreased range of motion of the shoulder. She believes it is because of the repetitive work she has done. . . .

Dr. Burkman treated claimant with anti-inflammatory medication and physical therapy. But the doctor did not have claimant undergo an MRI.

In mid-November 2001, while claimant was receiving medical treatment from Dr. Burkman, she injured her back when she was knocked down by a calf while helping her

father. When Dr. Burkman released claimant to return to work as of November 29, 2001, claimant had been off work due to her back injury. According to claimant, she returned to work for respondent for one or two weeks and then terminated her employment as she moved to a different part of the state where she obtained light office work.

Despite leaving the physical and repetitious work that she performed for respondent, claimant's right shoulder symptoms did not resolve and would wax and wane. In September 2002, when claimant sought medical treatment for neck complaints at the Shawnee Mission Medical Center, she also reported she was having right shoulder symptoms. Medical notes dated either late September or early October 2002 from the medical center read, in part:

This is a 39-year-old female who comes in with an 8-week history of having problems with shoulder pain on the right side with some decreased range of motion. . . . The neck symptoms have completely resolved but it did not really seem to change her right shoulder symptoms that initially happened when she was at work. She was apparently pulling out some pieces of lumbar [sic] and while she was pulling out she felt pain in the right shoulder. She was evaluated through the work compensation and she has been doing range of motion stretching exercises at home. Her boyfriend has set up a pulley in the garage that she has been working with, but the Vioxx just really did not help the pain and she has been living with this long enough that she would like to have this further evaluated. She has not lost any specific range of motion, but is still just dealing with the pain. She does not require doing any type of lifting or physical activity as she is working at a desk.

The medical center referred claimant to orthopedist Dr. Don B. W. Miskew, who saw claimant in late October 2002 and who sent claimant for an MRI. According to the history that Dr. Miskew took, claimant had been experiencing right shoulder pain for one year. The MRI indicated a partial tear in the right rotator cuff for which the doctor recommended surgery.

The Board concludes claimant's present right shoulder symptoms and, thus, the present need for medical treatment are directly related to the repetitive trauma injury that she sustained while working for respondent. Accordingly, the July 31, 2003 Order should be affirmed.

Respondent and its insurance carrier's argument that claimant sustained nothing more than a temporary aggravation of a preexisting condition is not supported by the record. Although it is true that claimant had, among others, neck and right shoulder symptoms following a 1997 automobile accident, the greater weight of the evidence establishes that her present symptoms directly stem from the repetitive work activities that she performed for respondent.

WHEREFORE, the Board affirms the July 31, 2003 Order entered by Judge Sample.

IT IS SO ORDERED.

Dated this ____ day of September 2003.

BOARD MEMBER

c: Timothy M. Alvarez, Attorney for Claimant
J. Scott Gordon, Attorney for Respondent and its Insurance Carrier
Kenneth J. Hursh, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director